

**STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION**

FROM Philip Trowbridge, P.E.
Water Quality Standards Program Manager

Date February 7, 2011

Offices
Dept of Environmental Services
Water Division

SUBJECT 2011 Triennial Review of NH's Water Quality Standards

TO Water Quality Standards Advisory Committee

Introduction

States are required to hold a public hearing every three years (a "triennial review") regarding changes to the state water quality standards (40 CFR 131.20(a)). DES held a public hearing on March 14, 2008 when the Surface Water Quality Regulations (Env-Wq 1700) were readopted. DES received no comments on the rules at this hearing.

In the years since the last public hearing, DES has worked with the Water Quality Standards Advisory Committee to prepare a rulemaking proposal for two sections of the regulations (Env-Wq 1708.10 and 1708.12), which pertain to the antidegradation policy. DES is currently working with the Water Quality Standards Committee identify additional updates to the water quality standards (statute and rule). However, these updates are still being developed and are not ready for rulemaking at this time. Therefore, the 2011 triennial review and public hearing will pertain to the following two topics:

- Rulemaking proposal for Env-Wq 1708.10 and 1708.12
- Solicit pre-rulemaking input on the water quality standards in general

Process

DES will use the state rulemaking process with sufficient time between steps to satisfy the federal public participation requirements of the triennial review. This process will address the rulemaking proposal for Env-Wq 1708.10 and 1708.12 and will solicit public comment on the water quality standards in general. General comments on the standards will be considered by DES, along with input from the Water Quality Standards Advisory Committee and agency priorities, for future changes to the water quality standards for the 2014 triennial review. The timeline for the 2011 triennial review is shown on Table 1.

Table 1: Timeline for 2011 Triennial Review of New Hampshire's Water Quality Standards

Action	Completed or Deadline
State Review of Water Quality Standards (per 40 CFR 131.20)	-----
Develop rulemaking proposal for Env-Wq 1708.10 and 1708.12	Completed
Rulemaking Process	-----
Submit rules for Water Council Review	Completed (12/8/10)
File request for Fiscal Impact Statement	Completed (1/28/11)
Receive Fiscal Impact Statement	
File Notice of Rulemaking and Request for Advance Public Comment on Subject Matter of Possible Rulemaking	on or before 2/11/11
Publish Notice of Hearing (>45 days before hearing per 40 CFR 25.5)	2/18/11
Public Hearing for rulemaking proposal on Env-Wq 1708.10 and 1708.12 (Hearing will coincide with regularly scheduled WQSAC meeting.)	4/14/11
Public Hearing for pre-rulemaking comments on the water quality standards in general (Hearing will coincide with regularly scheduled WQSAC meeting.)	4/14/11
End Public Comment Period	4/25/11
File Final Proposal	on or before 5/6/11
JLCAR Review	5/20/11
Adoption of revised rules by DES	no later than 5/31/11
Certification of revised rules by Attorney General	no later than 8/15/11
Submittal of revised rules to EPA (per 40 CFR 131.6 and 131.20(c))	no later than 9/15/11
Begin or continue work on revising the water quality standards for topics identified in the pre-rulemaking hearing and WQSAC discussions.	10/1/11

Federal Regulations

Key sections of the relevant regulations are shown in **bold text**.

40 CFR 131.20 State review and revision of water quality standards

(a) State review . **The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.** Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

(b) Public participation. **The State shall hold a public hearing for the purpose of reviewing water quality standards**, in accordance with provisions of State law, EPA's water quality management regulation (40 CFR 130.3(b)(6)) and public participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

(c) Submittal to EPA. **The State shall submit the results of the review**, any supporting analysis for the use attainability analysis, the methodologies used for site-specific criteria development, any general policies applicable to water quality standards and any revisions of the standards to the Regional Administrator for review and approval, within 30 days of the final State action to adopt and certify the revised standard, or if no revisions are made as a result of the review, within 30 days of the completion of the review.

40 CFR 25.5 Public hearings

(a) Applicability. Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State, interstate, or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(b) Notice. **A notice of each hearing shall be well publicized**, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by §25.4(b)(5). **Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing.** However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. **The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information.** Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.

(c) Locations and time. Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.

(d) Scheduling presentations. The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

(e) Conduct of hearing. The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public. The agency should consider allowing a question and answer period. Procedures shall

not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).

(f) Record. **The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings** and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.

40 CFR 131.6 Minimum requirements for water quality standards submission

The following elements must be included in each State's water quality standards submitted to EPA for review:

- (a) Use designations consistent with the provisions of sections 101(a)(2) and 303(c)(2) of the Act.
- (b) Methods used and analyses conducted to support water quality standards revisions.
- (c) Water quality criteria sufficient to protect the designated uses.
- (d) An antidegradation policy consistent with §131.12.
- (e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.
- (f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the uses specified in section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.